



AN ACT REVISING THE SMALL BUSINESS HEALTH INSURANCE PROGRAM; ALLOWING THE INSURANCE COMMISSIONER TO EXEMPT THE SMALL BUSINESS HEALTH INSURANCE PURCHASING POOL FROM REPORTING AS REQUIRED FOR VOLUNTARY PURCHASING POOLS; CLARIFYING TERMS FOR PREMIUM INCENTIVE PAYMENT SCHEDULES; CLARIFYING THE DESCRIPTION OF HEALTH PLANS AS THOSE PROVIDING CREDITABLE COVERAGE; PROVIDING REVISED ELIGIBILITY TERMS FOR OWNERS, PARTNERS, OR SHAREHOLDERS EARNING MORE THAN \$75,000 AND FOR CERTAIN EMPLOYEES OR DEPENDENTS; REVISING FUNDING TERMS FOR PREMIUM ASSISTANCE AND PREMIUM INCENTIVE PAYMENTS; AMENDING SECTIONS 33-22-1816, 33-22-2004, 33-22-2006, 33-22-2007, 33-22-2008, AND 53-4-1004, MCA; AND PROVIDING EFFECTIVE DATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 33-22-1816, MCA, is amended to read:

**"33-22-1816. Commissioner powers and duties -- application for registration -- reporting insolvency.** (1) The commissioner shall develop forms for registration of an organization as a voluntary purchasing pool.

(2) An organization seeking to be registered as a voluntary purchasing pool shall make application to the commissioner. The commissioner shall register an organization as a voluntary purchasing pool upon proof of fulfillment of the qualifications provided in 33-22-1815.

(3) Except as provided in subsection (5), on March 1 of each year, the voluntary purchasing pool shall provide a report and financial statement for the previous calendar year to the commissioner ~~in order~~ so that the commissioner may determine:

- (a) whether the operation of the voluntary purchasing pool is fiscally sound;
- (b) whether the voluntary purchasing pool is bearing any risk; and
- (c) the number of individuals covered.

(4) The annual report of the voluntary purchasing pool must disclose its total administrative cost.

(5) A voluntary purchasing pool may choose to operate on a fiscal year other than on the calendar year. A voluntary purchasing pool that establishes a fiscal year that is other than the calendar year shall provide the report required in subsection (3) to the commissioner within 60 days of the voluntary purchasing pool's fiscal yearend.

(6) The commissioner may exempt the small business health insurance purchasing pool established in 33-22-2001 from the reporting requirements under subsection (3)."

**Section 2.** Section 33-22-2004, MCA, is amended to read:

**"33-22-2004. Powers and duties of board.** (1) The board shall:

(a) establish an operating plan that includes but is not limited to administrative and accounting procedures for the operation of the purchasing pool and a schedule for premium incentive and premium assistance payments and that complies with the powers and duties provided for in this section;

(b) require employers and employees to reapply for premium incentive payments or premium assistance payments on an annual basis;

(c) upon reapplication, give priority to employers and their employees who are already receiving the premium incentive payments and premium assistance payments;

(d) upon reapplication, allow employers to retain eligibility to receive premium incentive payments and premium assistance payments on behalf of their employees if the number of their employees goes over the maximum number, not to exceed nine employees, established by the commissioner in administrative rule;

(e) renew purchasing pool group health plan coverage for all employer groups, even if the employer group no longer receives or is eligible for a premium incentive or premium assistance payment;

(f) adopt a premium incentive payment ~~amount~~ schedule that is based on a percentage of the employer's share of the premium and apply the schedule uniformly to the same for all registered eligible small employers who join the purchasing pool or obtain qualified association health plan coverage;

(g) adopt premium assistance payment amounts that, in combination with the premium incentive payments, are consistent with the amounts provided for in 33-22-2006 and 33-22-2008 or, with the assistance of the department of public health and human services, adopt a premium assistance payment schedule that is equitably proportional to the income or wage level for employees;

(h) establish criteria for determining which employees will be eligible for a premium assistance payment

and the amount that the employees will receive from among those eligible small employer groups that have registered with the commissioner pursuant to 33-22-2008 and applied for coverage under the purchasing pool group health plan or qualified association health plan. However, to the extent that federal funds are used to make some premium assistance payments, criteria for those payments must be consistent with any waiver requirements determined by the department of public health and human services pursuant to 53-2-216. Eligibility for employees is not limited to the waiver eligibility groups.

(i) make appropriate changes to eligibility or other elements in the operating plan as needed to reach the goal of expending 90% of the funding dedicated to premium incentive payments and premium assistance payments during the current biennium;

(j) limit the total amount of premium incentive payments and premium assistance payments paid to the amount of available state, federal, and private funding;

(k) approve no more than six fully insured group health plans with different benefit levels that will be offered to employers participating in the purchasing pool;

(l) prepare appropriate specifications and bid forms and solicit bids from health insurance issuers authorized to do business in this state;

(m) contract with no more than three health insurance issuers to underwrite the group health plans that will be offered through the purchasing pool;

(n) request that the department of public health and human services seek a federal waiver for medicaid matching funds for premium assistance payments based on the department's analysis, as provided in 53-2-216, if it is in the best interests of the purchasing pool;

(o) comply with the participation requirements provided for in 33-22-1811;

(p) meet at least four times annually; and

(q) within 2 years after the purchasing pool is established and considered stable by the board, examine the possibility of offering an opportunity for individual sole proprietors without employees to purchase insurance from the purchasing pool without premium incentive payments, premium assistance payments, or tax credits.

(2) The board may:

(a) borrow money;

(b) enter into contracts with insurers, administrators, or other persons;

(c) hire employees to perform the administrative tasks of the purchasing pool;

(d) assess its members for costs associated with administration of the purchasing pool and request that the commissioner transfer funds or request that the department of public health and human services transfer funds from the special revenue account, as provided in 53-6-1201, for that purpose;

(e) set contribution levels for employers;

(f) at least 30 days before the end of the current fiscal year, request that funds be transferred from the funds appropriated for premium incentive payments and premium assistance payments to the department of revenue for reimbursement of the general fund to offset tax credits if the number of eligible small employers seeking premium incentive payments and employees receiving premium assistance payments is insufficient to exhaust at least 90% of the appropriated funds for the premium incentive and assistance payments during a biennium fiscal year;

(g) at least 90 days before the end of the current fiscal year, request that funds be transferred from the funds allocated for tax credits to the funds appropriated for premium incentive payments and premium assistance payments if the number of eligible small employers seeking tax credits is insufficient to exhaust at least 90% of the funds allocated for tax credits during a fiscal year;

~~(g)~~(h) seek other federal, state, and private funding sources;

~~(h)~~(i) accept all small employer groups who apply for coverage under the small business health insurance pool group health plan even if they are not eligible for any tax credit or premium incentive payment and have not been registered by the commissioner pursuant to 33-22-2008;

~~(i)~~(j) receive from the commissioner's office or the department of public health and human services premium incentive payments on behalf of eligible small employers and premium assistance payments on behalf of employees, collect the employer or employee premiums from the employer or employees, and make premium payments to insurers on behalf of the eligible small employers and employees;

~~(j)~~(k) request the commissioner to direct more than 30% of the available funding for premium incentives and premium assistance payments to qualified association health plan coverage instead of purchasing pool coverage; and

~~(k)~~(l) pay appropriate commissions to licensed insurance producers who market purchasing pool coverage."

**Section 3.** Section 33-22-2006, MCA, is amended to read:

**"33-22-2006. Premium incentive payments, premium assistance payments, and tax credits for small employer health insurance premiums paid -- eligibility for small group coverage -- amounts.** (1) An employer is eligible to apply for premium incentive payments and premium assistance payments or a tax credit under this part if the employer and any related employers:

(a) did not have more than the number of employees established for eligibility by the commissioner at the time of registering for premium incentive payments or premium assistance payments or a tax credit under 33-22-2008;

(b) provide or will provide a group health plan that meets the requirements of creditable coverage for the employer's and any related employer's employees;

(c) do not have delinquent state income tax liability owing to the department of revenue from previous years;

(d) have been registered as eligible small employer participants by the commissioner as provided in 33-22-2008; and

(e) do not have any employees, not including an owner, partner, or shareholder of the business, who received more than \$75,000 in ~~gross compensation, including bonuses and commissions~~ wages, as defined in 39-71-123, from the small employer or related employer in the prior tax year.

(2) An owner, partner, or shareholder of a business who received more than \$75,000 in wages, as defined in 39-71-123, and those individuals' spouses who are employees are not eligible under this chapter for:

(a) any premium assistance payment. However, a premium incentive payment may be made for the premium share paid by the business for group health insurance coverage for:

(i) the owner, partner, or shareholder;

(ii) a spouse of those listed in subsection (2)(a)(i) who is also an employee of the business; or

(iii) dependents of those listed in subsection (2)(a)(i).

(b) a tax credit for group health insurance premiums paid by the business or the owner, partner, or shareholder for group health insurance coverage for the individual or the individual's dependents.

(3) An employee, including an owner, partner, or shareholder or any dependent of an employee, who is also eligible for the children's health insurance program provided for under Title 53, chapter 4, part 10, or medicaid under Title XIX of the Social Security Act may become ineligible to receive a premium assistance payment.

~~(2)~~(4) The commissioner shall establish, by rule, the maximum number of employees that may be employed to qualify as a small employer under subsection (1). However, the number may not be less than two employees or more than nine employees. The maximum number may be different for employers seeking premium incentive payments and premium assistance payments than for employers seeking a tax credit. The number must be set to maximize the number of employees receiving coverage under this part. The commissioner may not change the maximum employee number more often than every 6 months. If the maximum number of allowable employees is changed, the change does not disqualify registered employers with respect to the tax year for which the employer has registered.

~~(3)~~(5) Except as provided in subsection ~~(4)~~ (6), an eligible small employer may claim a tax credit in the following amounts:

(a) (i) not more than \$100 each month for each employee and \$100 each month for each employee's spouse, if the employer covers the employee's spouse, if the average age of the group is under 45 years of age; or

(ii) not more than \$125 each month for each employee and \$100 each month for each employee's spouse, if the employer covers the employee's spouse, if the average age of the group is 45 years of age or older; and

(b) not more than \$40 each month for each dependent, other than the employee's spouse, if the employer is paying for coverage for the dependents, not to exceed two dependents of an employee in addition to the employee's spouse.

~~(4)~~(6) An employer may not claim a tax credit:

(a) in excess of 50% of the total premiums paid by the employer for the qualifying small group;

(b) for premiums paid from a medical care savings account provided for in Title 15, chapter 61; or

(c) for premiums for which a deduction is claimed under 15-30-121 or 15-31-114.

~~(5)~~(7) An employer may not claim a premium incentive payment in excess of 50% of the total premiums paid by the employer for the qualifying small group."

**Section 4.** Section 33-22-2007, MCA, is amended to read:

**"33-22-2007. Filing for tax credit -- filing for premium incentive payments and premium assistance payments.** (1) An eligible small employer may:

(a) apply the tax credit against taxes due for the current tax year on a return filed pursuant to Title 15, chapter 30 or 31; or

(b) if the eligible small employer did not sponsor a group health plan that provides creditable coverage for employees during the 2 years prior to the first tax year of registration for the premium incentive payments or premium assistance payments or operates a new business that is less than 2 years old and has never sponsored a group health plan that provides creditable coverage, apply to receive monthly premium incentive payments and premium assistance payments to be applied to coverage obtained through the purchasing pool or qualified association health plan coverage approved by the commissioner.

(2) An eligible small employer may not, in the same tax year, apply the tax credit against taxes due for the current tax year as provided for in subsection (1)(a) and receive premium incentive payments as provided for in subsection (1)(b).

(3) The premium incentive payments and premium assistance payments provided for in subsection (1)(b) must be paid pursuant to a plan of operation implemented by the board and any applicable administrative rules.

(4) (a) If an eligible small employer's tax credit as provided in subsection (1)(a) exceeds the employer's liability under 15-30-103 or 15-31-121, the amount of the excess must be refunded to the eligible small employer. The tax credit may be claimed even if the eligible small employer has no tax liability under 15-30-103 or 15-31-121.

(b) A tax credit is not allowed under 15-30-129, 15-31-132, or any other provision of Title 15, chapter 30 or 31, with respect to any amount for which a tax credit is allowed under this part.

(5) The department of revenue or the commissioner may grant a reasonable extension for filing a claim for premium incentive payments or premium assistance payments or a tax credit whenever, in the department's or the commissioner's judgment, good cause exists. The department of revenue and the commissioner shall keep a record of each extension and the reason for granting the extension.

(6) (a) If an employer that would have a claim under this part ceases doing business before filing the claim, the representative of the employer who files the tax return or pays the premium may file the claim.

(b) If a corporation that would have a claim under this part merges with or is acquired by another corporation and the merger or acquisition makes the previously eligible corporation ineligible for the premium incentive payments, premium assistance payments, or tax credit in the future, the surviving or acquired corporation may file for the premium incentive payments, premium assistance payments, or tax credit for any

claim period during which the former eligible corporation remained eligible.

(c) If an employer that would have a claim under this part files for bankruptcy protection, the receiver may file for the premium incentive payments, premium assistance payments, or tax credit for any claim period during which the employer was eligible."

**Section 5.** Section 33-22-2008, MCA, is amended to read:

**"33-22-2008. Registration -- funding limitations -- transfers -- maximum number -- waiting list -- information transfer for tax credits.** (1) (a) Each eligible small employer that proposes to apply for premium incentive payments and premium assistance payments or a tax credit under this part must be registered each year with the commissioner. ~~The commissioner shall begin taking new applications for 2006 on October 1, 2005.~~

(b) An eligible small employer may submit a new application for the premium incentive payments and premium assistance payments or the tax credit anytime during the year, but in order to maintain the employer's registration for the next year, the registration application must be renewed each year.

(c) The commissioner shall begin accepting renewal applications on October 1 of each year and stop accepting renewal applications on October 31 of each year.

(d) The registration application must include the number of individuals covered, as of the date of the registration application, under the small group health plan for which the employer is seeking premium incentive payments and premium assistance payments or a tax credit. If, after the initial registration, the number of individuals increases, the employer may apply to register the additional individuals, but those additional individuals may be added only at the discretion of the commissioner, who shall limit enrollment based on available funds.

(e) A small employer is not eligible to apply for premium incentive payments and premium assistance payments or a tax credit for a number of employees, or the employees' spouses or dependents, over the number that has been established in 33-22-2006 as the maximum number of employees an employer may have in order to qualify for registration for the time period in question.

(f) An employer's decision to apply for premium incentive payments and premium assistance payments or a tax credit is irrevocable for 12 months or until the purchasing pool group health plan or qualified association health plan renews its registration, whichever time period is less. An employer may choose to discontinue receiving any premium incentive payments and premium assistance payments or tax credits at any time.



(2) The commissioner shall register qualifying eligible small employers in the order in which applications are received and according to whether or not the application is for premium incentive payments and premium assistance payments or a tax credit. Initially, 60% of the available funding must be dedicated to provide and maintain premium incentive payments and premium assistance payments for eligible small employers who have not sponsored group health plans that provide creditable coverage in the previous 2 years and who chose to join the purchasing pool or a qualified association health plan and 40% of the available funding must be dedicated to tax credits for eligible small employers who currently sponsor a small group health plan that provides creditable coverage. Funding may be transferred from the allocated fund for premium incentive payments and premium assistance payments to the general fund for tax credits or from the funds allocated for tax credits to the allocated fund for premium incentive payments and premium assistance payments if the board requests the transfer as provided in 33-22-2004 and the commissioner approves the request.

(3) (a) The maximum number of eligible small employers is reached when the anticipated amount of claims for premium incentive payments and premium assistance payments and tax credits has reached 95% of the amount of money allocated for premium incentive payments and premium assistance payments and tax credits.

(b) The commissioner may establish a waiting list for applicants that are otherwise qualified for registration but cannot be registered because of a lack of money or because the maximum number of eligible small employers has been reached.

(c) The commissioner shall mail to each employer registered under this section a notice of registration containing a unique registration number and indicating eligibility for either premium incentive payments and premium assistance payments or a tax credit. The commissioner shall also issue to each employer that is eligible for premium incentive payments and premium assistance payments or the tax credit a certificate, placard, sticker, or other evidence of participation that may be publicly posted.

(d) The commissioner shall notify all persons who applied for registration and who were not accepted that they were not registered and the reason that they were not registered.

(4) A prospective participant shall apply for registration on a form provided by the commissioner. The prospective participant shall:

- (a) provide the number of employees and whether the employer qualifies under 33-22-2006;
- (b) provide information that is necessary to estimate the amount of the premium incentive payments and

premium assistance payments payable to the applicant or the amount of the tax credit available to the applicant, such as the ages of employees or dependents, relationships of employees' dependents, and information required by the department of public health and human services for determination of eligibility for premium assistance payments matched by federal funds;

(c) indicate whether the prospective employer intends to pursue the claim as a tax credit through the income tax process or through premium incentive payments and premium assistance payments to be applied toward purchasing pool or eligible qualified association health plan coverage;

(d) indicate whether or not the employer previously sponsored a group health plan that provided creditable coverage and, if so, when and for how long; and

(e) provide any additional information determined by the commissioner to be necessary to support an application.

(5) Each year, small employer participants shall reregister with the commissioner in order to determine the participant's continued eligibility.

(6) The commissioner shall transmit to the department of revenue, at least annually, a list of eligible small employers that are taxpayers entitled to the tax credit and shall specify the taxpayer's name and tax identification number, the tax year to which the credit applies, the amount of the credit, and whether the credit is to be applied against taxes due on the taxpayer's return or paid as premium incentive payments or premium assistance payments. Unless there has been a finding of fraud or misrepresentation on the part of the taxpayer regarding issues relating to eligibility for the tax credit, the department of revenue may not redetermine or change the commissioner's determination regarding the taxpayer's entitlement to and amount of the tax credit.

(7) If the department of public health and human services receives approval for a section 1115 waiver as provided in 53-2-216, the commissioner shall work with the department of public health and human services with regard to eligibility determinations as required by federal law or waiver conditions."

**Section 6.** Section 53-4-1004, MCA, is amended to read:

**"53-4-1004. (Temporary) Eligibility for program -- rulemaking.** (1) To be considered eligible for the program, a child:

(a) must be 18 years of age or younger;

(b) must have a combined family income at or below 250% of the federal poverty level or at a lower level

determined by the department of public health and human services as provided in subsection (4);

(c) may not already be covered by private insurance that offers creditable coverage, as defined in 42 U.S.C. 300gg(c), for 3 months prior to enrollment in the program or since birth, whichever period is less, except that the break in coverage is waived for a covered dependent whose coverage moves from the purchasing pool provided under Title 33, chapter 22, part 20, to coverage under this part;

(d) may not be eligible for medicaid benefits; and

(e) must be a United States citizen or qualified alien and a Montana resident.

(2) The department of public health and human services shall adopt rules that establish the program's criteria for residency. The criteria must conform as nearly as practicable with the residency requirements for medicaid eligibility.

(3) Subject to 53-4-1009(3), rules governing eligibility may also include financial standards and criteria for income and resources, treatment of resources, and nonfinancial criteria.

(4) If the department determines that there is insufficient funding for the program, it may lower the percentage of the federal poverty level established in subsection (1)(b) in order to reduce the number of persons who may be eligible to participate or may limit the amount, scope, or duration of specific services provided. (Terminates on occurrence of contingency--sec. 15, Ch. 571, L. 1999; sec. 14, I.M. No. 155, approved November 4, 2008.)"

**Section 7. Contingent voidness.** [Section 6] is void on the date that the centers for medicare and medicaid services notifies the department of public health and human services of disapproval of the state plan amendment. The department of public health and human services shall notify the code commissioner of the date of the notification if the state plan amendment is disapproved.

**Section 8. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 2009.

(2) [Section 3] is effective January 1, 2010.

- END -

I hereby certify that the within bill,  
SB 0135, originated in the Senate.

---

Secretary of the Senate

---

President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

---

Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

SENATE BILL NO. 135  
INTRODUCED BY C. LARSEN  
BY REQUEST OF THE STATE AUDITOR

AN ACT REVISING THE SMALL BUSINESS HEALTH INSURANCE PROGRAM; ALLOWING THE INSURANCE COMMISSIONER TO EXEMPT THE SMALL BUSINESS HEALTH INSURANCE PURCHASING POOL FROM REPORTING AS REQUIRED FOR VOLUNTARY PURCHASING POOLS; CLARIFYING TERMS FOR PREMIUM INCENTIVE PAYMENT SCHEDULES; CLARIFYING THE DESCRIPTION OF HEALTH PLANS AS THOSE PROVIDING CREDITABLE COVERAGE; PROVIDING REVISED ELIGIBILITY TERMS FOR OWNERS, PARTNERS, OR SHAREHOLDERS EARNING MORE THAN \$75,000 AND FOR CERTAIN EMPLOYEES OR DEPENDENTS; REVISING FUNDING TERMS FOR PREMIUM ASSISTANCE AND PREMIUM INCENTIVE PAYMENTS; AMENDING SECTIONS 33-22-1816, 33-22-2004, 33-22-2006, 33-22-2007, 33-22-2008, AND 53-4-1004, MCA; AND PROVIDING EFFECTIVE DATES.